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August 17, 1998

HAND DELIVERED

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.,
Washington, D.C. 20554

Re: CC Docket No. 98-77

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS TELECOM), are an original and 16 copies of its comments on Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to	)	
Rate-of-Return Regulation	)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

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COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom or TDS), on behalf of its 106 incumbent local exchange carriers (LECs) in 28 states and by its attorneys, submits these comments on the Notice of Proposed Rulemaking (NPRM) released June 4, 1998 in the above-captioned proceeding.[1]

SUMMARY

The characteristics of rate of return and price cap local exchange carriers (LECs) are significantly different. Primarily located in rural areas, rate of return LECs and their customers are uniquely dependent on the combined revenues from universal service support and interstate access charges for affordable, evolving services on a network that keeps pace with

[1] Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, FCC 98-101, CC Docket No. 98-77 (rel. June 4, 1998) (NPRM).

telecommunications resources in more urban areas. The Commission's universal service mechanism for rate of return carriers has not yet been designed or validated, which prevents evaluation of the cumulative impact of access charge reform proposals and modified universal service support. Consequently, the Commission should not adopt any permanent access charge changes until it has finished designing and validating an effective universal service mechanism for rate of return companies that ensures reasonably comparable rural and urban rates, services and network modernization and interexchange rate averaging.

If it chooses to act before then, the Commission should adopt only interim access charge changes that do not jeopardize its transitional universal service support commitments to rural LECs and their customers. Any interim access plan should also cap rate of return LECs' SLC and PICC charges at no more than the national average of price cap LECs' SLCs and PICCs and avoid changes that would increase the level of rate of return LECs' necessary residual usage-based carrier common line charges. The Commission should be prepared to revisit interim access charge changes as part of a comprehensive constellation of regulatory reforms that harmonizes universal service, pricing flexibility, updated jurisdictional separation rules and pro-competitive measures into an integrated framework that satisfies the 1996 Act's requirements, including the universal service mandates of §254.

I. THE COMMISSION CANNOT RESPONSIBLY EVALUATE, LET ALONE DECIDE, CRITICALLY IMPORTANT ACCESS REFORM ISSUES FOR RATE OF RETURN COMPANIES WHILE UNIVERSAL SERVICE ISSUES REMAIN UNSETTLED

When Congress enacted the Telecommunications Act of 1996, it entrusted the Commission with the complicated, multifaceted task of adjusting federal regulation to the newly enacted national policy commitment to competition, universal service and deregulation. Congress set deadlines for decisions for implementing pro-competition network-opening requirements and sufficient federal universal service mechanisms to preserve and advance universal service and nationwide network advances. However, in §251(g), Congress expressly left the existing access charge framework in place until the Commission chose to change it. What the 1996 Act did not take into account, but the Commission quickly realized, is that adjusting regulation to rely primarily on marketplace forces, even over a transition period, necessarily involves not a series of separate issues, but a constellation of inextricably intertwined issues. The Commission recognized from the outset that three overlapping issues lay at the core of the policy tangle, which it dubbed the "trilogy" of interconnection, universal service and access charges.[2]

A. Sufficient Universal Service Support Is an Essential Component of Rural LECs' Interstate Cost Recovery

In the first instance, owing to legislated implementation schedules, interconnection and universal service were tackled separately, and access reform was deferred. Not one of these regulatory challenges has been fully resolved yet, largely because it is simply not possible to

[2] Other vital parts of the reform equation include jurisdictional separations, which is heavily implicated in the workings of the universal service transition plan, pricing flexibility and reduced regulatory interference with business and market decisions.

evaluate the effects of proposed changes without knowing the results of the comprehensive package of changes. The necessary broad focus is again missing from this rate of return LEC access charge reform effort, although another of the overlapping trilogy issues — universal service — is an indispensable part of any evaluation of whether access charge structural modifications will comport with the 1996 Act. Indeed, universal service answers are critically important to evaluating how proposed changes will affect rate of return companies, "rural telephone companies"[3] and members of the National Exchange Carrier Association (NECA) Carrier Common Line pool,[4] and, consequently, their customers. Rural telephone companies constitute a statutory category the Act has designated for safeguards to buffer the transition to competition.[5] Since the Commission is similarly aware of the significant differences between rural telephone companies and other ILECs, the Commission has prudently kept the pre-Act universal service support system largely intact until 2001, at the earliest, for these smaller carriers. As the Commission's Chairman has pointed out, after visiting some rural ILECs, preserving this transitional arrangement preserves support that has succeeded in enabling the rural telephone industry to provide exemplary service, and even the adjustments made so far to make support more explicit and portable represent "a lot of change for companies that are

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[3] 47 U.S.C. §153(47).

[4] A majority of companies outside the biggest urban-centered LECs, including all 106 TDS Telecom ILECs, belong to all three of these overlapping carrier classifications.

[5] 47 U.S.C. §§214(e), 251(f), 253(f).

geographically very targeted and undiversified."[6] "High cost support for rural telephone companies is working well," Chairman Kennard later explained, "and it should not be changed until we know that the changes we implement will provide adequate and appropriate high cost support."[7] The Commission should not take any premature permanent action here that would jeopardize that commitment to sufficient transitional support for rural rate of return LECs.

B. Rate of Return LECs and Their Customers Are Uniquely At Risk from Cost Recovery Decisions Without Adequate Evaluation of the Universal Service Implications

Rate of return LECs typically serve the nation's less densely settled and less economically developed areas. Because those areas have higher unit costs of service, lower potential traffic volumes, fewer available economies of scale and, consequently, more limited profit opportunities than those available in metropolitan markets, they have historically failed to attract the largest telephone companies. The companies that grew up to fill this void have unique characteristics. Their operations tend to be more volatile, since their risks are concentrated in small markets. Hence, most rate of return companies have found it necessary to remain in the NECA pools to share risks and save on the expenses of analyzing costs, forecasting demand and revenues and preparing and defending interstate tariffs.

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6 Remarks by William Kennard, Chairman, FCC, to USTA's Inside Washington Telecom, Apr. 27, 1998).

7 Statement of Chairman William E. Kennard at Field Hearing on Universal Service in Anchorage, Alaska, before Subcommittee on Communications, Committee on Commerce, Science, and Transportation, United States Senate (July 1, 1998).

Rate of return LECs also differ widely among themselves and serve markets with divergent characteristics. For some, competition is already a reality, and their competitors focus on winning away their few high volume business or institutional customers. For others, competition will come more slowly. The timing of competition is under the control of marketplace conditions. The economic conditions in a thin market cannot be changed by increasing the degree of government intervention to help attract competitors that would not be attracted by the actual economic marketplace signals. For example, a market that could not support a first universal service provider on a stand-alone basis cannot be expected to attract a second to vie for the relatively few residential and business customers, although one large business or institutional customer may be enough to attract competition <u>for that customer</u>. Competition for that customer may not benefit most rural customers — and may actually increase their rates or add to the nationwide tab for providing universal service to the remainder of that thin market. That is why Congress added the rural telephone company definition in §3(47)), softened the Act's most stringent pro-competitive measures for these more vulnerable areas in §§251(f), 253(f) and gave states discretion not to authorize support payments for a competitor in a rural market in §214(e).[8] In reconciling its access charge structure with the 1996

[8] That is also why the Commission should not waste its time and resources in investigating whether the statutory rural exemption in §251(f) from the 1996 Act's most intrusive inroads into incumbents' networks designed to facilitate entry in urban markets is thwarting competition. That gets the question backwards: It is the economics of serving those exempt areas that caused Congress to adopt the revocable exemption to avert harm to customers and universal service providers in thin markets, until the conditions change.

Act's universal service requirements, therefore, the Commission should keep in mind both the economic differences recognized and accommodated by Congress and the decision in the new federal law to commit much of the ticklish balancing of the particular characteristics and needs of each individual rural market to the expertise of state regulators.

C. The Commission Should Not Adopt Permanent Access Charge Changes Before It Can Evaluate their Impacts in Conjunction with a Definitive, Sustainable Universal Service Mechanism for Rural Rate of Return LECs

All of the TDS Telecom LECs are rural ILECs, required to provide service throughout their areas on request and to serve as the carrier of last resort unless they are relieved of that responsibility by their state regulators. TDS Telecom welcomes and appreciates the Commission's intention to retain sufficient high cost support for rural carriers while it completes the difficult task of designing a workable and valid replacement that will satisfy the 1996 Act's universal service mandates for rural telephone companies. We strongly urge the Commission to wait until that task is completed to make any permanent changes in the access charge rules.

Prudent timing of permanent access reform will enable the Commission to maintain the transitional universal service support for rural LECs, as it has undertaken to do, while it resolves high cost support issues. Thereafter, enough definitive universal service information should be available to enable the Commission and rate of return ILECs to make much more meaningful predictions about the impact of permanent access charge proposals on rural customers and rate of return companies. If the Commission nevertheless wishes to proceed before it completes its implementation of modified high cost support mechanisms for non-rural and rural LECs , TDS

Telecom recommends adoption of the interim structural changes discussed below, with the caveat that the Commission should be prepared to revisit its access charge determinations when it has completed the rural LEC universal service mechanism.

II. WHENEVER THE COMMISSION ADOPTS NEW ACCESS CHARGE RULES FOR RATE OF RETURN LECs, IT MUST FIT THE ACCESS CHARGE PLAN INTO A COMPREHENSIVE AND COORDINATED SOLUTION

What Congress perhaps sensed in leaving the schedule and nature of access reform in the Commission's hands is that this area, an entrenched bastion of regulatory micromanagement, is particularly difficult to redesign and reevaluate on a stand-alone basis: Not only subsequent changes in the universal service support mechanism, but also modifications of the jurisdictional allocation of costs and the growth of competition, are almost certain to throw any prematurely imposed access cost recovery equation out of balance. Many small and rural LECs obtain more than 65% of their cost recovery from interstate access charges and universal service support. The TDS Telecom LECs also depend on interstate access charges and universal service support. One TDS Telecom company obtains 60% of its revenues from these sources.[9] Given their typically heavy reliance on access charges, any changes that lead to inadequate cost recovery from access charges will impede affordable service for these LECs' customers and deter the network investment to offer up-to-date advanced telecommunications services that Congress intends.[10]

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[9] The average recovery from total interstate access for TDS LECs is 33%. The TDS LECs' cost recovery from total interstate and intrastate access ranges from 44 - 83%, with an average cost recovery from total access of 57%.

[10] 47 U.S.C. §254(b)(3).

As an integral part of any access reform package, therefore, it is imperative that the Commission ensure that the combined revenues from access charges and federal high cost support through the nationwide spreading of the rate of return LECs' high costs will be "sufficient" to satisfy the §254 mandates for affordable and reasonably comparable rural rates. Obviously, this assessment cannot be made when access and universal service revenues are looked at in isolation.

However, the crucial universal service issues are also part of a larger composite policy picture. Jurisdictional allocations have in the past played the central role in ensuring sufficient nationwide high cost recovery, by allocating specified higher than average costs to the interstate jurisdiction and identifying the costs which interstate access charges recover. Accordingly, access charge reform must be consistent with any changes to the jurisdictional separations rules. If separations changes are adopted after access reform, either the separations changes will have to accommodate the new access charge regime (and universal service mechanisms) or the access charge issues will have to be reopened. In either event, separations are an integral part of a comprehensive program to adjust federal regulations and policies to reflect the national competition, universal service and deregulation policy triad.

It is also critical to implementing the will of Congress not to neglect the deregulatory message of the 1996 Act in adapting the interstate cost recovery process for this group of heavily regulated carriers, the rate of return ILECs, to comport with the new national marketplace environment. Access charges are one instance of how the ILECs are constrained in their pricing in ways alien to the particular market facts and market forces in their areas. Access reform should therefore be coordinated with regulatory relaxation that lets rate of return LECs gain enough pricing and regulatory flexibility to respond to competition.

The bottom line is clear. Access reform is just as crucially important for rate of return LECs as for their price cap regulated counterparts. However, with transitional universal service that works in place, long term separations and universal service policies up-in-the-air and only the most minimal regulatory relief under consideration, the Commission needs to broaden the scope and coordination of its many reform initiatives and do the job right before making permanent access charge changes. The Commission should not decide on access charge reform issues for rate of return LECs in a vacuum, without coordinating the many unresolved and inextricably inter-related issues that prevent responsible stand-alone evaluation of the impacts of access proposals.

The essential comprehensive reform approach necessary for adoption of permanent access charge changes that satisfy the new law can only be designed and tested by measuring and weighing with special care, the comprehensive impacts on rate of return LECs. Thus, until the federal and state commissions, as well as TDS Telecom and other diverse rate of return LECs, can reliably price out the effect of comprehensive implementation and reform, only interim measures can be adopted. If the Commission adopts an interim plan, it will have to remain ready to open and restudy the various pieces of the policy puzzle later to test the overall impacts on rural customers and universal service providers under the 1996 Act mandates.

Whenever the Commission moves forward with access reform, TDS strongly urges a comprehensive approach, grounded in the fundamental access structure adopted for price cap carriers, but altered to fit rate of return LEC differences. The comprehensive access reform should, at least, (a) proceed in tandem with the development of consistent and sustainable universal service and jurisdictional separations programs and (b) separately quantify the effects on rate of return companies and their customers. The issues are ripe for consolidated consideration, just as the Commission ultimately combined CC Dockets 78-72 and 80-286 to fit its new access charge scheme into the universal service and separations initiatives of the early 1980s. The result of the comprehensive policy framework and rules must be pro-competitive, must ensure comparable rates, services and network advances for rural and urban customers and geographic toll rate averaging as §254 mandates, and must take meaningful steps towards relaxing the tight regulations that hamper rate of return LECs from competing fairly in their own markets.

III. RATE OF RETURN COMPANIES' SLCs AND PICCs SHOULD BE NO HIGHER THAN THE NATIONWIDE AVERAGE OF PRICE CAP COMPANY SLCs AND PICCs

The Commission has already adopted access reform measures for price cap companies. However, as the NPRM wisely acknowledges (¶¶38-39), the situation of rate of return LECs is different because their non-traffic sensitive costs and the relative size of their Carrier Common Line revenue requirements exceed those of the price cap companies. The Carrrier Common Line Charge elimination plan adopted for price cap companies would entail much more time and greater end user cost burdens for rate of return LECs' customers. Until 2001, at least, the Commission should follow the medical maxim "First do no harm," by reconciling whatever it does to the access charge structure for rate of return LECs with the rural universal service transition plan. For the longer term solution, too, avoiding adverse universal service implications, as well as aggressively pursuing the principles in §254, must be given a prominent role in the design of common line cost recovery.

The interim rate of return access charge plan discussed in these comments, like the price cap rules, would make significant progress in recovering more of the costs of non-traffic sensitive exchange access service on a flat-rated basis. The past practice of recovering loop costs that do not vary with the level of usage through usage-based charges to the interexchange carriers comes under increasing pressure as competition grows. High volume long distance customers have the widest choice of ways to avoid paying their traditional share. And, the interexchange carriers are also positioned by the national policy favoring local competition to look for alternative means to pick up and deliver long distance calls for their end users. Moreover, rate of return LECs cannot charge carrier or customer rates that exceed the charges from nearby large LECs, lest they lose their most lucrative customers to those large LECs or the large LECs' competitors.

The price cap company access reform plan responded to competitive and economic pressures by shifting more carrier common line costs into flat-rated end user and interexchange carrier charges. The plan also buffered the impact on residential and small business customers by opting for higher flat rate increases for multi-line business customers. The Commission should replicate the basic elements of this change for rate of return LECs. However, Congress is well aware that higher SLCs and other flat-rated end user charges, such as the flat-rated PICC pass-through charges imposed by interexchange carriers, are fundamentally the equivalent of local rate increases. And, given the past recovery of many of these costs in usage-based rates, such changes tend to have a regressive impact, shifting costs from heavy long distance users to lighter users or non-users of long distance services. Accordingly, the Commission must transfer only part of the rate of return LECs' higher carrier common line (CCL) revenue requirement into flat customer and carrier charges. In addition, it must ensure that (a) that the flat-rated carrier charges paid by interexchange carriers are recovered only via end user charges that comport with the statutory requirement for comparable rural and urban consumer charges and nationwide averaging of interexchange carriers' charges to end user customers; and (b) that interexchange carriers pass through their savings from access charge reductions to their customers in reduced, but nevertheless averaged, long distance rates.

A. Rate of Return LECs' SLCs Should Not Exceed the National Average of Price Cap SLCs

The Commission should follow its price cap access reform approach to the extent, first, of leaving undisturbed the SLCs charged to primary residential and single line business access lines, which are capped at $3.50. The Commission should not, however, treat primary and non-primary lines differently, as it did for price cap LECs. TDS Telecom believes the Commission lacks authority under §202 and the §254(b)(3) mandate for reasonably comparable rural and urban consumer rates to discriminate in the charges for primary and secondary residential lines that plainly offer "like" telecommunications services. The legal objections apply to both price cap and non-price cap LECs. In addition, second lines are increasingly used for access to new telecommunications resources, such as the Internet, which the 1996 Act seeks to encourage. Moreover, second lines are a major source of growth for many LECs. Large differentials in price would not only discourage customers from subscribing to additional lines and using information services. Higher charges could also undermine competitive neutrality, for example, when customers use a competitor's service solely to avoid a high second-line charge for an ILEC-provided line.

Even if a distinction could be justified, the Commission has not yet been able to define the difference between primary and non-primary lines. The price cap companies' good faith efforts to apply a term the Commission has not yet been able to define have led to different definitions and counts, necessitating investigation of various carriers' implementation efforts.[11] Indeed, the record in CC Docket No. 97-181 demonstrates insurmountable practical, administrative and customer privacy problems with distinguishing primary and non-primary

[11] Tariffs Implementing Access Charge Reform, Order Designating Issues For Investigation And Order on Reconsideration, DA 98-151,CC Docket No. 97-250, ¶15 (rel. January 28, 1998)(Common Carrier Bureau).

lines.[12] Nevertheless, if the Commission carries forward this faulty distinction it adopted for the price cap LEC access plan, then non-primary residential access line SLCs charged by rate of return LECs should not exceed the national average of the price cap LEC level, measured annually, for such charges. Similarly, the rate of return LECs' SLCs for multi-line business users (and Basic Rate Interface ISDN service) should follow the transition adopted for price cap access charges, but should not increase beyond that year's national average for price cap companies' multi-line business SLCs.

Since all SLCs are rates imposed directly on end users of all incumbent LEC loops, it is imperative that the access charge structure and levels adhere to the 1996 Act's fundamental national rate structure requirement for reasonably comparable rural and urban rates for reasonably comparable rural and urban services. If disproportionate SLC increases for rural multi-line businesses place a price penalty on locating in rural areas, which are often served by rate of return LECs, some of the impressive telecommunications-based economic development in such areas, such as catalogue sales and telemarketing or credit card verification operations could become uneconomic -- simply because of the loss in reasonable comparability of their rates and services.

B. Rate of Return LECs' PICCs Should Not Exceed the National Average for Price Cap LECs' PICCs

[12] E.g., RTC Petition for Reconsideration, CC Docket No. 96-262, July 11, 1997, pp. 7-8; RTC Comments, CC Docket No. 97-181, Sept. 25, 1997, pp. 2-4.

The price cap access reform plan uses new Presubscribed Interexchange Carrier Charges or "PICCs" to shift additional common line costs from usage-based CCL recovery to flat-rated recovery from interexchange carriers. For price cap companies, these charges will increase and then decrease as more costs shift into the SLC, until the CCL is eliminated. The price cap LECs' charges differ for primary residential and single line business lines compared to non-primary residential and multi-line business lines.[13] For rate of return LECs, TDS Telecom strongly urges the Commission not to increase the PICCs charged to the interexchange carriers beyond the national average for price cap LECs' PICCs, computed for each year.

Using the national average to charge interexchange carriers will reduce the cost and complexity of administering the NECA pools and tariffs. Even more important, it will lessen the incentives for interexchange carriers to deaverage long distance rates or limit the availability of calling programs in high cost areas and will help to enforce the geographic interexchange rate averaging and rate integration mandates of §254(g). From the statutory perspective, it is the charges passed through to end users of long distance services that the Commission is charged with equalizing. However, recent PICC pass-throughs to long distance customers have caused confusion and charges that customers are being overcharged and misled.[14] Section 254(g)

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[13] Once again, it is not apparent why non-primary residential lines should be differentiated from primary residential lines.

[14] TR Daily, Consumer Study, FCC Audits Revive Access Cuts Dispute, Aug. 13, 1998; Telecommunications Reports, Kennard Charges IXCs with Hoarding Access Charge Cuts, Cites 'Growing Body of Evidence,' March 2, 1998; TR Daily, Stevens, Hollings Question FCC'S PICC Decisions, May 18, 1998; Telecommunications Reports, Virginia SCC Staff Slams MCI's

expressly requires interexchange providers to charge their rural subscribers rates "no higher than the rates charged by each such provider to its subscribers in urban areas" and imposes a similar requirement for a carrier's charges to subscribers in different states. The Commission recognized this statutory directive in the price cap access charge order when it refused to forbear from the averaging mandate to allow deaveraged pass through of the PICCs by interexchange carriers.[15] The Commission's forbearance from tariff and direct rate regulation of interexchange carriers also presents enforcement problems, even though the Commission stressed in the forbearance order that it retained authority and would use the complaint process to enforce violations of §254(g) brought to its attention.[16] Preventing wide divergences in the flat per line charges of rate of return and more urban-centered price cap companies will begin to mitigate the incentive to undermine rate averaging by limiting its source — the disparities in the cost per line or per minute of rural and urban service.

IV. THE DIFFERENCE BETWEEN THE SUM OF SLC AND PICC COST RECOVERY AND TOTAL COMMON LINE COSTS FOR RATE OF RETURN LECS SHOULD BE

PICC, USF Surcharges, March 26, 1998.

[15] Access Charge Reform, CC Docket No. 96-262, First Report and Order , 12 FCC Rcd 15982 (¶97) (1997); recon. 12 FCC Rcd 10119 (1997); appeal pending sub nom. Southwestern Bell Tel. Co. v FCC, No. 97-2618, et al., (8th Cir. argued Jan. 15, 1998); further recon., 12 FCC Rcd 16606 (1997).

[16] Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, 11 FCC Rcd 20,730, ¶36 (1996), stayed sub nom. MCI Telecommunications Corp. v. FCC, 96-1459, et al., Feb. 13, 1997; recon., 12 FCC Rcd 15,014 (1997), ¶5; further recon.pending.

RECOVERED THROUGH USAGE-BASED CCL RATES, BUTTRESSED BY UNIVERSAL SERVICE SUPPORT AS NEEDED TO AVOID INCENTIVES TO SHORTCHANGE RURAL MARKETS

Unlike the Commission's access plan for price cap companies, the access charge plan for rate of return companies must not attempt to shift all carrier common line costs into direct flat-rated customer charges. Owing to the unique characteristics of rate of return LECs, extending the Commission's access reform plan to rate of return carriers would not even accomplish the Commission's goal of phasing out usage-based cost recovery for carrier common line costs that are not incurred on a usage-sensitive basis. Instead, the residual costs not collected by these charges, applying the ceilings described above, should be recovered through the traditional usage-sensitive Carrier Common Line charge. Although usage-based recovery will be reduced substantially by the shift to flat-rated charges, the disparity in charges will ultimately have to be dealt with through universal service.

The interexchange carriers would prefer to get their loop access services wholly at consumer expense, by ultimately shifting all common line costs into the SLCs. However, it is entirely appropriate and consistent with cost causation to maintain residual Carrier Common Line charges for a share of common line costs. The expenses incurred to equip local exchange networks for "equal access," presubscription and convenient dialing arrangements to reach competing long distance networks have been required at the instigation of the interexchange carriers, not end users. For example, requirements to ensure that a customer can receive a call from an interexchange carrier chosen by the caller, 800 number portability and many other local network costs have been imposed in response to the operating and marketing needs of the interexchange carriers. In fact, in rural areas the choice of each competing long distance carrier whether it will provide direct or even 800 number access to the customers in that exchange dictates whether a customer's subscription to local service "includes" access to such competing carriers at all. With all costs shifted to the SLCs in rural areas served by rate of return LECs, these rural consumers neglected by competing interexchange carriers would nevertheless pay for the benefits of competition available solely to others.

The transition for price cap ILECs will wholly eliminate the interexchange carriers' Carrier Common Line charge payments for access over price cap LECs' networks, but not for rate of return LECs. The Commission should seek to prevent disadvantages to rural consumers from the market fact that rate of return LECs' will need to recover residual CCL access as a result of using the national average price cap SLC and PICC levels as a ceiling on rate of return LECs' SLCs and PICCs. Such a ceiling is a necessary concomitant of the Commission's duty to prevent geographic long distance rate deaveraging under §254(g) and to achieve rural and urban rate and service comparability under §254(b)(3). These obligations, of course, arise under the 1996 Act's universal service mandates. Hence, when access reform and universal service are brought together, the Commission should shift a share of the access charge differential into the universal service fund to which all carriers that provide interstate services contribute under §254(d).

Particularly if the Commission goes forward with access reform for rate of return ILECs while the transitional universal service mechanism is in effect for rural LECs, the Commission should also avoid shifting any additional costs into the Carrier Common Line revenue requirement. For example, reassigning line side port costs and other costs now assigned for switched access charge recovery will increase the access charge disparity problem the Commission is trying to address here. An effective means to prevent losses in support from cost reallocations under Part 69 will also be essential to keep the Commission's commitment to maintain sufficient rural LEC support during the transition.

The Commission should also refrain from moving the TIC into the common line costs for rate of return LECs. Adding the TIC to the CCL access charges would, again, only increase the pressures on nationwide rate averaging and discourage competitive interexchange providers from serving rural customers. It would also interfere with efficient administration and proper functioning of the NECA pools. Unlike price cap LECs, the rate of return LECs do not have productivity offsets with which the TIC can be systematically reduced.[17]

The rate of return ILECs have higher switching costs, as well as higher loop costs, as the Chairman recently recognized.[18] Thus, the TIC may properly remain in the usage sensitive rates

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[17] The Commission held in the LEC price caps proceeding that it did not have necessary information relevant to the proper productivity factor for the diverse small and mid-size LECs. Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, FCC 93-206, CC Docket No. 87-313 5 FCC Rcd 6786, ¶¶106-107 (1990).

[18] Remarks by William E. Kennard, Chairman, FCC, Connecting All Americans Conference, U.S. Department of Commerce (Feb. 26, 1998).

for rate of return LECs. However, if usage sensitive recovery threatens geographically averaged long distance rates, the Commission should consider universal service fund recovery.

V. THE COMMISSION SHOULD PROVIDE ADDITIONAL PRICING FLEXIBILITY AND EXPLORE FURTHER RELAXATION OF REGULATION FOR RATE OF RETURN LECs IN CONNECTION WITH ACCESS REFORM

One of the primary purposes of the 1996 Act is to promote deregulation in telecommunications markets to allow competition to work.[19] Thus, TDS Telecom is concerned to see implementation proceeding with numerous new regulatory requirements and burdens for ILECs. Any access charge reform should embody the deregulatory thrust of the new federal law, both by avoiding new regulatory costs and tasks and by positive relief in the form of pricing flexibility and exploration of regulatory alternatives for rate of return LECs and NECA pool members.

Rather than simply shifting costs from one category to another for recovery and devising new mandatory charges and rate elements, the Commission should adopt optional approaches for LECs that will help them in their transition to market-driven decision making. The Commission should make more use of the optional approach proposed (¶56) for recovering additional line port costs for providing ISDN compared to providing an analog port. Any new rules should minimize the need for costly studies, perhaps by providing default percentages or the like.

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[19] Conference Report at 113 (1996 Act enacted "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans...").